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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 674

SKUBS, v/s MAUDE BAKKE,

Petitioner,

OTIS McALLISTER & CO., a corporation,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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No.

SKIBS, A/S MARIE BAKKE,
Petitioner,

v.

OTIS, McALLISTER & CO., a corporation,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner prays that a Writ of Certiorari be issued to review the judgment of the United States Court of Appeals for the Ninth Circuit, entered in the above entitled case on October 10, 1958.

Citations of Opinions Below

The Order dated May 15, 1956, of the District Court overruling respondent's exceptions to the answer to the libel is reported at 1956 AMC 1307 and is printed at page 39 of the Transcript of Record.

The Order for Decree of the District Court for the Northern District of California, Southern Division, dated November 22, 1957, is reported at 1958 AMC 1972 and is printed at page 39 of the Transcript of Record.

The Opinion of the Court of Appeals delivered on October 10, 1957, unreported to date, is printed in Appendix A hereto.

Jurisdiction

The Judgment of the Court of Appeals was entered on October 10, 1958. This Petition for a Writ of Certiorari is filed less than ninety days after the judgment was entered. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

Question Presented

Does the Carriage of Goods by Sea Act, 1936, hereafter COGSA, abrogate the long-established rule that "true valuation clauses" are legal clauses in contracts for the carriage of goods by sea, as was the settled law under the Harter Act and under the general maritime law prior to the Harter Act?

Statutes Involved

Carriage of Goods by Sea Act, 46 U.S.C. Section 1303(8):

> "Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with the goods, arising from negligence, fault, or failure in the duties and obligations provided in this section, or lessening such liability otherwise than as provided in this Act, shall be null and void and of no effect."

Carriage of Goods by Sea Act, 46 U.S.C. Section 1304(5):

> "Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in

connection with the transportation of goods in an amount exceeding $500 per package lawful money of the United States, or in case of goods not shipped in packages, per customary freight unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading. This declaration, if embodied in the bill of lading, shall be prima facie evidence, but shall not be conclusive on the carrier. By agreement between the carrier, master, or agent of the carrier, and the shipper, another maximum amount than that mentioned in this paragraph may be fixed: provided, That such maximum shall not be less than the figure above named. In no event shall the carrier be liable for more than the amount of damage acually sustained . . . ."

The Harter Act, 46 U.S.C. Section 190:

"It shall not be lawful for the manager, agent, master or owner of any vessel transporting merchandise or property from or between ports of the United States and foreign ports to insert in any bill of lading or shipping document any clause, covenant, or agreement whereby it, he, or they shall be relieved from liability for loss or damage arising from negligence, fault, or failure in proper loading, stowage, custody, care, or proper delivery of any and all lawful merchandise or property committed to its or their charge. Any and all words or clauses of such import inserted in bills of lading or shipping receipts shall be null and void and of no effect."

The Harter Act, 46 U.S.C. Section 191:

"It shall not be lawful for any vessel transporting merchandise or property from or between

ports of the United States of America and foreign ports, her owner, master, agent or manager to insert in any bill of lading or shipping document any covenant or agreement whereby the obligations of the owner or owners of said vessel to exercise due diligence, properly equip, man, provision, and outfit said vessel, and to make said vessel seaworthy and capable of performing her intended voyage, or whereby the obligations of the master, officers, agents, or servants to carefully handle and stow her cargo and to care for and properly deliver same, shall in any wise be lessened, weakened, or avoided."

Statement

A shipment of coffee was carried from Callao, Peru, to San Francisco, California, aboard the M.S. MARIE BAKKE, under a bill of lading containing, among others, Clause 18 providing in its relevant parts that:

> "it is agreed that in view of the difficulty of determining in advance what the market value of the goods will be upon arrival at destination, the 'agreed value' thereof . . . shall be an amount equal to the shipper's invoice value, if any, . . . plus . . . freight, insurance and duties, . . . irrespective of whether any other value is greater or less, and in case of loss of, or damage to, or in connection with such goods, the carrier's liability, if any, shall be determined on the basis of such 'agreed value', . . ." (Finding of Fact VII, Tr. 43)

The shipment sustained loss and damage during ocean carriage. Respondent, as owner of the coffee during the voyage, invoking the Admiralty jurisdiction of the District Court (28 U.S.C. 1333), commenced the libel to recover damages for loss and damage to the shipment. Petitioner's answer-

to the libel alleged that the amount of damages should be determined by reference to Clause 18 of the bill of lading. Respondent's exceptions to the answer, alleging that Clause 18 of the bill of lading was invalid under the Carriage of Goods by Sea Act, 1936, were overruled by Order of the District Court dated May 15, 1956 (Tr. 30). The case was thereafter submitted on an Agreed Statement of Facts (Tr. 31). It was agreed that the f.o.b. invoice value of the coffee in question plus freight and insurance and duties was $00.4979 per pound, and that the sound market value of such coffee at the time and place of delivery was $00.5475 per pound (Tr. 34). Petitioner admitted liability for shortage of 162 pounds of coffee and for damage to 71,097 pounds of coffee, which damaged coffee sold for $31,468.62, with costs amounting to $1,117.80.

On November 22, 1957, the District Court entered its Order for Decree (Tr. 39) and on December 4, 1957, entered Findings of Fact and Conclusions of Law (Tr. 40) and its Final Decree (Tr. 46). The decree was for damages measured by reference to Clause 18 of the bill of lading which the Court held was a "true valuation clause" and not a clause of limitation and did not contravene the requirements of the United States Carriage of Goods by Sea Act, 1936. Respondent appealed the decree on the sole issue of the validity of Clause 18 of the bill of lading. On October 10, 1958, the Court of Appeals for the Ninth Circuit entered its order reversing the District Court. The opinion and judgment of the Court of Appeals are found in Appendix A hereto.

REASONS FOR GRANTING THE WRIT

1. The Issue Involved in this Case is of Great Importance to the Entire Maritime Industry and to the Marine Insurance Industry, Both in the United States and Abroad.

The Court of Appeals holds a traditional ocean bill of lading clause invalid. It is the customary provision fixing the method of determining the value of cargo in calculating the damages recoverable from an ocean carrier. For a great many years such true valuation clauses have appeared in the ocean bills of lading of substantially every United States steamship operator and most foreign steamship operators.[1] We agree with the following statement made by Proctors for the Institute of Marine Underwriters of the United States[2] in this case:

> "The Carriage of Goods by Sea Act governs the liability of common carriers with respect to all foreign shipments to or from the United States by sea. Many carriers subject to the Act have inserted in their bills of lading 'invoice value clauses' similar to that used by appellee. So far as we can ascertain no appellate court has yet passed upon the validity of such clauses under the Act. The decision herein will therefore affect not

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[1] The Court of Appeals' opinion indicates that agreements on value were first authorized by the Harter Act, thereby modifying the prior law which COGSA then restored. This is incorrect. The Harter Act did not initiate the validity of these clauses. They were in use and held valid long before 1893. As an example, this Court mentions favorably a clause "making the value of the goods at the place and time of shipment the measure of the carrier's liability" which appeared in a maritime bill of lading issued in 1874. *Phoenix Ins. Co.* v. *Erie and Western Trans. Co.*, 117 U.S. 312, 322 (1886).

[2] Messrs. Bigham, Englar, Jones & Houston, of New York, in their Motion For Leave to File Brief Amicus Curiae filed in the Court of Appeals.

> only the particular importer and carrier involved, but all importers, exporters, carriers, and their agents, throughout the United States, who engage directly or indirectly in foreign commerce by water. Similarly, it will be important not only in the coffee trade, but in connection with every type of commodity which enters or leaves the United States by ship."

The true valuation clause involved herein is substantially identical to those found in all ocean bills of lading. Consequently, the decision of the Court of Appeals cannot be limited to the particular clause it considered and will affect practically every ocean bill of lading currently in use by any steamship operator, American or foreign, trading in foreign commerce to or from the United States.[3] In fact, the ultimate decision in this case will affect ocean carriers' liabilities throughout the world since the pertinent statutes, COGSA sections 3(8) and 4(5) are part of the American enactment of the so-called Hague Rules[4] which have been adopted by most of the maritime nations of the world. The practices of many years standing in the adjustments of claims for loss or damage to cargo are also invalidated by the Court of Appeals' decision.[5]

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[3] In Appellant's Opening Brief in the Court of Appeals, respondent said:

> "There being no prior appellate decision on the precise point involved, the decision of this Honorable Court will be of great importance to everyone connected with the shipment and carriage of merchandise to and from United States ports in foreign commerce."

[4] The International Convention for the Unification of Certain Rules Relating to Bills of Lading (Brussels, 1924)

[5] Typical of the long established customs and relationships between importers and ocean carriers which will be upset is the "Green Coffee Agreement" relating to the coffee trade involved in this case (Findings of Fact X and XI; Tr. 20-23)

Any change in the long settled practice of agreeing on the method of fixing the value of cargo in the computation of damages at invoice cost plus disbursements will also affect the entire marine insurance industry. As Proctors for the Institute of Marine Underwriters of the United States[6] also stated:

> "The extent of common carrier liability is of direct concern to cargo underwriters who normally must bear those losses for which the carriers need not respond. For that reason the Institute of Marine Underwriters of the United States is vitally interested in the interpretation of the Carriage of Goods by Sea Act."

It also concerns the protection and indemnity underwriters who must respond for the ocean carriers' liabilities. The premiums charged by cargo underwriters and by protection and indemnity underwriters have been established, in part, upon this agreed method of calculating value and upon the loss experience of the underwriters under that practice.

The decision of the Court of Appeals would substitute the uncertainty of fluctuating markets for the preexisting certainty of shippers' actual costs (invoice value, freight, insurance and duties) and will require reexamination and recalculation of the premiums to be charged by both types of underwriters.

This Court has established the validity of true valuation clauses under the Harter Act which still governs the coastwise and intercoastal trade of the United States.[7] The decision of the Court of Appeals would therefore establish a divided rule under which true valuation clauses are in-

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[6] See Footnote 2.

[7] The Carriage of Goods by Sea Act applies in these trades only if the parties specifically contract that it shall. Some coastwise and intercoastal bills of lading so provide; many do not.

valid in foreign commerce but valid in coastwise and intercoastal commerce.

Even in the absence of conflict between Courts of Appeals, this Court in *United States* v. *Atlantic Mutual Ins. Co.*, 343 U.S. 236 (1951) *(The ESSO BELGIUM)* agreed to review a provision customarily found in ocean bills of lading because of the importance of the question. The "Both to Blame" clause considered in *The ESSO BELGIUM* was significant only in cases governed by American law.[8] The significance of the true valuation clause involved here is not so limited. Its validity and use in all ocean commerce throughout the world where the Hague Rules apply will be determined by the decision of this Court.

It is respectfully submitted that the importance of the issue presented in this case calls for the invocation of the reviewing jurisdiction of this Court.

2. The Decision of the Court of Appeals is Directly in Conflict with the Applicable Decisions of this Court as to the Nature and Validity of True Valuation Clauses and as to the Criteria to be Considered in Determining Whether the Carriage of Goods by Sea Act Modified the Established Rule of Law Existing Before its Passage.

The judgment of the Court of Appeals is inconsistent with the applicable decisions of this Court in the regards mentioned above, the inconsistencies being matters of admiralty law of general application throughout the entire shipping and marine insurance industries. There are no

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[8] Practically all maritime nations adopted the Brussels Collision Convention of 1910 providing that the damages caused to cargoes shall be borne by the colliding vessels in proportion to their respective degrees of fault. The United States did not adopt it, and under the rule of *The CHATTAHOOCHEE*, 173 U.S. 540 (1899) a different result followed under American law. The "Both to Blame" clause was designed to correct this difference and was therefore only significant where American law applied. (See Griffin, *The American Law of Collision* (1949) pp. 562-563).

issues of fact in this case and only questions of law are presented. The Court of Appeals' decision will not be factually distinguishable from any other case involving a true valuation clause.

The decisions of this Court have clearly established the very real difference between a limitation clause on the one hand and a true valuation clause on the other. The leading case is *ANSALDO SAN GIORGIO I* v. *Rheinstrom Bros. Co.*, 294 U.S. 494 (1935) which describes a limitation clause as one which

> "recites that a sum named in the bill of lading is the agreed value of the goods, or their value per unit or per package, in the absence of the shipper's declaration of a higher value; that the rate is fixed with reference to the specified value and if a greater be declared a higher rate will apply; that in consideration of the rate to be charged, the *carrier's liability for loss or damage shall be limited to the stipulated value. In case of loss or damage this clause inures to the carrier's, but not to the shipper's benefit.* The latter can in no event recover more than his actual loss, but may have to take much less. The damages are computed in the usual way without reference to the stipulation, but, if when so computed they exceed the agreed limit of value, no recovery of the excess may be had." (Emphasis added)

The same decision then describes a "true valuation clause":

> "The other is a true valuation clause. It is to the effect that in event of loss or damage for which the carrier is liable, the same shall be computed on the basis of the value of the goods at the place and time of shipment. Such a provision may benefit the shipper if the goods depreciate prior to the time for delivery by the carrier, and may lessen the carrier's normal liability if they should appreciate prior to that time."

The distinction is confirmed in *Smith* v. *The FERNCLIFF*, 306 U.S. 444 (1939) where, referring to a true valuation clause, the Court said:

> "*The clause in question prescribes a measure of recovery rather than limits the amount which may be recovered when loss or damage occurs.* For a long time, in the absence of a controlling statute, fraud or imposition, such provisions in bills of lading have been recognized as valid by this and other Federal courts. Also by many—perhaps a majority—of the state courts." (Citing cases) (Emphasis added)

The distinction between these two entirely different clauses was recognized by the District Court. It found the clause in issue a valid "true valuation clause" and not a clause of limitation.[9] The Court of Appeals did not challenge the District Court's conclusion, but it simply ignored the distinction and held the clause invalid under COGSA Section 3(8) because it did not conform to the requirements of Section 4(5), which is the section governing limitation provisions.

The Court of Appeals thus tested the legality of true valuation clauses by the standards applicable only to limitation clauses. This conflicts directly with the holding of this Court in *The FERNCLIFF*, supra.

In that case, as here, a true valuation clause was challenged as illegal because it did not conform to the then standard for validity of a limitation clause.[10] In disposing

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[9] Order of May 15, 1956 (Tr. 30); Conclusion of Law II (Tr. 45)

[10] Before COGSA and under the Harter Act limitation clauses were valid only if "tied to the rate" by allowing the shipper a choice of rates corresponding with different limitations (*The ANSALDO SAN GIORGIO I*, supra). COGSA substituted a new standard for validity of limitation clauses by requiring that they could not *limit* recovery to less than $500 per package. (COGSA Section 4(5).)

of the first specific question certified to it, this Court held that a true valuation clause was valid even though it did not conform to the standard for validity of a limitation clause.[11] It reached this conclusion even though damages based on market value at destination would have been $11.00 per ton and the true valuation clause operated to fix damages at $7.00 per ton—a difference of over 30%. Despite this disparity between the two measures of damages this Court said that the "clause in question prescribes a measure of recovery rather than limits the amount which may be recovered when loss or damage occurs."

Depending on the particular facts of each case, a true valuation clause may operate either to increase or decrease the recovery a cargo owner would have received if damages had been calculated on market value at destination.[12] Both in *The FERNCLIFF* and in this case it operated to decrease the recovery. Yet the Court of Appeals here condemns the clause for that very reason, saying it violates Section 4(5) of COGSA. This conflicts directly with the unequivocal holding in *The FERNCLIFF* that the validity of true valuation clauses is not judged by the standards governing limitation clauses.

The FERNCLIFF also considered whether the operation of the true valuation clause violated the prohibition of Section 1 of the Harter Act against bill of lading provisions by which the carrier shall be "relieved from liability for loss or damage arising from negligence, fault or failure" in performing its duties. This Court adopted the statement

[11] The question certified by the Court of Appeals in that case was: "Is an invoice cost valuation clause [true valuation clause], such as that here involved, inserted in a marine bill of lading without offering a choice of rates to a shipper, valid and binding upon the parties?" This Court answered "Yes, where there has been no fraud or imposition." *The FERNCLIFF*, supra, at 447, 451. No element of fraud or imposition exists, or has even been suggested, in the circumstances of this case.

[12] *The ANSALDO SAN GIORGIO I*, supra; *The FERNCLIFF*, supra.

that: "The clause we are dealing with does not appear to operate in that way [i.e., to relieve the carrier from the consequences of its negligence']."

Summarizing, the true valuation clause before this Court in *The FERNCLIFF* did not meet the then requirements (being "tied to the rate") for validity of a limitation clause, and it operated to fix the recoverable damages at a figure much less than the recovery would have been if calculated on market value at destination. The true valuation clause in this case did not meet the current requirements governing limitation clauses (COGSA Section 4(5)), and it had the same effect on recoverable damages. *The FERNCLIFF* held the clause valid; the Court of Appeals here held it invalid.

No distinction in wording between the two litigated valuation clauses is even suggested to justify the diametrically opposite result. The only intervening change in law is the enactment of COGSA which establishes a statutory, rather than judicial requirement for validity of *limitation* provisions and combines the pertinent provisions of Sections 1 and 2 of the Harter Act in one paragraph (Section 3(8)).

The substitution of one requirement governing limitation provisions for another cannot explain the conflict between the Court of Appeals' holding and *The FERNCLIFF*. No explanation of that conflict remains unless Congress in adopting the rewording of Sections 1 and 2 of the Harter Act as Section 3(8) of COGSA intended to make a material change in the law.

Section 1 of the Harter Act prohibited clauses relieving a carrier from liability for failure to perform its duties to cargo, and Section 2 prohibited clauses which would lessen, weaken or avoid the carrier's obligations to perform those duties. These sections were amalgamated into Section 3(8) of COGSA, which prohibits clauses relieving the carrier

from liability for failure to perfom the same duties or lessening such liability otherwise than as permitted in COGSA. The conflict between the holding in the Court of Appeals here and in *The FERNCLIFF* cannot be explained on the regrouping of words in the process of amalgamation. The Harter Act's proscription against relieving from liability is neither expressly nor impliedly limited to *total* relief. There are degrees of relief from anything. The word "relieve" must be given its normal meaning. The upiversally accepted first meaning of "relieve" is "to free, wholly or partly, from" something painful, oppressive, burdensome, disagreeable, etc., and listed synonyms include "alleviate" and "lessen".[13] Hence liability can be "relieved" by 30 percent as well as by 100 percent. "Lessening" by 30 percent is also "relieving" by 30 percent.

It follows that the Harter Act's prohibition against clauses relieving from liability necessarily forbids partial relief, or "lessening", as well as total relief. Consequently, the Harter Act prohibits clauses "lessening" liability just as much as COGSA does. But the language of *The FERNCLIFF* is clear that a true valuation clause does not involve any kind of relief at all, either partial or total, from liability for the consequences of negligence.[14] It is obvious that the reasoning and the result reached by this Court in *The FERNCLIFF* would have been no different if the Harter

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[13] Webster's New International Dictionary of the English Language, 2nd Edition, 1949; Funk & Wagnalls New Standard Dictionary of the English Language, Medallion Edition, 1940; Britannica World Language Dictionary, Funk & Wagnalls Co. 1956.

[14] That the clause "prescribes a measure of recovery rather than limits the amount which can be recovered" and "does not appear to operate . . . 'to relieve the carrier from the consequences of its negligence'." This language is particularly significant in view of the arguments made to the Court (83 L. Ed. pp. 863-864).

Act had prohibited a "lessening of liability" by express terms instead of by necessary implication from the normal meaning of the word "relieved." [15]

Therefore, the difference in the phraseology used in the Harter Act as compared to COGSA cannot reconcile the holding of the Court of Appeals below with the diametrically opposite holding in *The FERNCLIFF* unless, using the criteria established by this Court, it is found that Congress intended to change the long-established prior law and believed it was doing so when it enacted Section 3(8) of COGSA.

It is abundantly clear that Congress had no thought whatever that the words of COGSA Sec. 3(8) in any way changed the preexisting American law.[16] For instance, the House Committee on Merchant Marine and Fisheries had before it a detailed analysis of the proposed legislation, section by

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[15] The Court of Appeals infers that this Court in *The FERNCLIFF* believed a different result would obtain under COGSA because this Court quoted the words of the District Court: "The particular question is not likely to arise again as the subject is now regulated by" COGSA. The Court of Appeals inserts "[of invoice value]" to describe the "question" involved. But the "question" in *The FERNCLIFF* was *not* the validity of true valuation clauses or "of invoice value." That had already been established. The "question" was whether such clauses *had to be "tied to the rate"* like limitation clauses. COGSA had created an entirely different set of rules governing limitation clauses in Section 4(5). Obviously, after COGSA, whether a limitation clause or any other clause was "tied to the rate" became immaterial. *This* was the "question" before the Courts in *The FERNCLIFF* and to which the quotation refers. Significantly, the Court of Appeals in *The FERNCLIFF*, clearly stating what "question" it was talking about, said, "Notwithstanding the passage of [COGSA] the question as to the correct method of computing damages under a valuation clause is deemed an important one, as to which an authoritative decision would seem desirable."

[16] Except to the extent that it expressly outlawed "benefit of insurance" clauses.

section, prepared by the Department of Commerce. With respect to Sections 3(7) and 3(8) it stated:

> "No change of existing law except that by the latter 'benefit of insurance' provisions in bills of lading are nullified . . ."[17]

This Court in *The ESSO BELGIUM*, supra, definitively stated the criteria to be applied in determining whether COGSA had changed the maritime law with respect to a particular bill of lading provision from what it had been before COGSA was enacted. *The ESSO BELGIUM* established that the "language and the hearings of [COGSA]"[18] should be examined to see if "Congress intended to alter the Harter Act in any respect material to [the] controversy"; or, if Congress indicated any "purpose to bring about a change in the long-existing relationships and obligations between carriers and shippers which would be relevant to the validity of" the clause in question; or, to carve "out a special statutory exception to the general rule" as it had existed before.

The Court of Appeals here completely ignored the question of Congressional intent, thus bringing itself into direct conflict with *The ESSO BELGIUM* and with the language, there quoted with approval, of *The KENSINGTON*, 183 U.S. 263, 268-269 (1902).

Two interesting comparisons illustrate the conflict between the Court of Appeals here and the decision of this Court in *The ESSO BELGIUM*.

1. The Congressional hearings on COGSA are full of argument about the "Both to Blame" clause which was at issue in *The ESSO BELGIUM*. Cargo interests argued that the clause would be invalid under Section 4(3) but urged

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[17] Hearings before the Committee on Merchant Marine and Fisheries, House of Representatives, 74th Congress, Second Session, page 11.

[18] All quoted language in this paragraph is from the decision of this Court in *The ESSO BELGIUM*, 343 U.S. at 240-241.

an amendment to make it certain;[19] steamship interests resisted the amendment, contending the clause would be valid under COGSA;[20] the amendment was not made. This Court held the legislative purpose was equivocal and insufficient to show Congressional purpose to change the preexisting law under which the "Both to Blame" clause was invalid. In contrast, the same Congressional hearings, beyond indicating that Section 3(8) did *not* change the law (except as to "benefit of insurance") are silent on true valuation clauses.[21] Consequently there is even less reason to believe Congress intended to change the prior law as to true valuation clauses. Yet the Court of Appeals here ignores the legislative history while holding that COGSA completely reversed the well settled prior law concerning true valuation clauses.

2. The reasoning and result reached by the Court of Appeals in this case is in conflict with both the majority opinion in the *ESSO BELGIUM* and the minority opinion as well. As applied to this case, *both* opinions point to the same result. Congress did not intend COGSA to change the rule under the Harter Act. The parties should be permitted to enter into private business agreements which substitute value at place of shipment (plus freight, insurance and duties) for value at destination as "the measure of recovery" in the event of loss. This Court has often said such arrangements do not offend any public policy.[22]

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[19] House Hearings, supra, pp. 52-53.

[20] Ibid, 55-59.

[21] Sometimes, referring to Section 4(5) and "per package" limitations, references to "value", "agreed valuation", "valuation clauses", etc. appear (Id., pp. 25, 60; Hearing Before the Committee on Commerce, United States Senate, 74th Congress, First Session, on S. 1152, pp. 32, 37) but the words are not used as words of art and it is clear, in context, that the reference is to *limitation* provisions, not to "true valuation clauses" of the kind in issue here.

[22] *The ANSALDO SAN GIORGIO I*, supra; *The FERNCLIFF*, supra; *Chicago RR Co.* v. *McCaull-Dinsmore Co.* 253 U.S. 97 (1919) (where Mr.

It is respectfully submitted that the conflicts between the ruling of the Court of Appeals below and the decisions of this Court warrant the grant of certiorari in this case.

Conclusion

The issue presented in this case is whether the adoption of the Hague Rules and their enactment as COGSA invalidated a clause which has for a very great many years appeared in substantially all ocean bills of lading, and which this Court had previously approved as valid and consistent with American public policy.

Acceptance of the case and determination of the issue by the court of last resort of the United States will settle the question not only for all who are engaged in foreign commerce to and from the United States, but also for the entire maritime industry of the world.

Petitioner prays that a writ of certiorari issue to review the judgment of the Court of Appeals for the Ninth Circuit in this case.

Respectfully submitted,

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Justice Holmes recognized "the convenience of the clause and the arguments in its favor" but held it invalid under the specific prohibition in the Cummins Amendment which was applicable to railroads and expressly not applicable to ocean carriers.)